(2)

No. 04-760

Supreme Court, U.S.
FILED
JAN 5 - 2005
OFFICE OF THE CLERK

In The

Supreme Court of the United States

EDWARD D. OPALEWSKI and PETER SIMAKAS,

Petitioners,

v.

RICHARD and DOROTHY FITZPATRICK,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ELIZABETH A. DOWNEY
38505 Woodward Ave.
Ste. 2300
Bloomfield Hills, MI 48304
(248) 258-7010
Counsel for Respondents

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

I. Did the Sixth Circuit err in holding that when pre-deprivation process is not required before barring citizens from their homes, the post-deprivation process must be constitutionally adequate under existing due process standards regardless of whether that process provides for judicial review?

II. Did the Sixth Circuit err in affirming the District Court's denial of qualified immunity to Petitioners when they failed to appeal aspects of the post-deprivation process found to violate due process?

III. Should Respondents receive double costs and attorney fees as damages for the delay of their trial?

LIST OF PARTIES

Petitioners/Defendants are Edward D. Opalewski and Peter Simakas ("the Officials"). Respondents/Plaintiffs are Richard and Dorothy Fitzpatrick. The City of Dearborn Heights is a Defendant, but as the interlocutory appeal was based on qualified immunity (which does not apply to municipalities), it is not a party to this Petition.

TABLE OF CONTENTS

	Page
Questions Presented	i
List of Parties	ii
Table of Contents	iii
Table of Authorities	iv
Statement of Jurisdiction	1
Constitutional, Statutory and Ordinance Provisions	1
Statement of the Case	1
Argument Against Granting the Petition	4
A. The Petition Does not Raise Issues of Peculiar Gravity or General Importance	4
B. There is No Split of Authority to Reconcile	5
C. There is No Reason to Review the $200 Fee Determination	10
D. There is no Reason to Review the Determination that Dearborn Heights Did Not Follow Its Own Ordinances	11
E. There is no Reason to Review the Determination that the Post-Deprivation Process did not Afford "Immediate" Review	12
F. The Court Should Award the Fitzpatricks Damages, Including Double Costs and Attorney Fees, For the Officials Delaying Trial Through a Frivolous Petition	13
Conclusion	15

TABLE OF AUTHORITIES

Page

SUPREME COURT CASES

American Construction Co. v. Jacksonville, T. & K.W. Railway Co., 148 U.S. 372 (1893) 5

Brosseau v. Haugen, 2004 WL 2847251 (Dec. 13, 2004 decision) 5

Camara v. Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967) 9

Dolan v. Tigard, 512 U.S. 374, 114 S.Ct. 2309, 29 L.Ed.2d 304 (1994) 9

Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 215 (1916) 5

M.L.B. v. S.L.J., 519 U.S. 102, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996) 10

Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) 5, 6, 9, 12, 14

Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981) 5

U.S. v. James Daniel Good Real Property, 510 U.S. 43, 114 S.Ct. 492, 126 L.Ed.2d 490 (1993) 10

Wagner Elec. Mfg. Co. v. Lyndon, 262 U.S. 226, 43 S.Ct. 589, 67 L.Ed. 961 (1922) 13

Withrow v. Larkin, 421 U.S. 35, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975) 9

Zinermon v. Burch, 494 U.S. 113, 110 S.Ct. 975, 108 L.Ed.2d 100 (1990) 6

TABLE OF AUTHORITIES – Continued

Page

OTHER FEDERAL CASES

Cohen v. City of Philadelphia, 736 F.2d 81 (3d Cir. 1984) 6

Flatford v. City of Monroe, 17 F.3d 162 (6th Cir. 1994) 7, 11, 12

Grayden v. Rhodes, 345 F.3d 1225 (11th Cir. 2003) 8

Herwins v. City of Revere, 163 F.3d 15 (1st Cir. 1998) 6

Jackson v. Cain, 864 F.2d 1235 (5th Cir. 1989) 11

Jones v. City of Youngstown, 980 F. Supp. 908 (N.D. Ohio 1997) 7

Mitchell v. City of Cleveland, 172 F.3d 49 (Table), 1998 WL 898872 (6th Cir. Dec. 17, 1998) 7

Myrick v. City of Dallas, 810 F.2d 1382 (5th Cir. 1987) 8

Sell v. City of Columbus, 2002 WL 2027113 (6th Cir. August 26, 2002) 8

Thomas v. Cohen, 304 F.3d 563 (6th Cir. 2002) 7

Yates v. City of Cleveland, 941 F.2d 444 (6th Cir. 1991) 14

COURT RULES

Supreme Court Rule 42.2 ..... 13, 15

STATEMENT OF JURISDICTION

The Fitzpatricks concur with the Officials' Statement of Jurisdiction, but deny that the Court should exercise it.

CONSTITUTION, STATUTORY AND ORDINANCE PROVISIONS

The Fitzpatricks concur with the constitutional and ordinance provisions the Officials cited, but note that they omitted Ordinance 7-656:

> Any person affected by any notice or order relating to the condemning and placarding of a dwelling or dwelling unit as unfit for human habitation may request and shall be granted a hearing on the matter before the zoning or building board of appeals, under the procedure set forth in section 7-482.

STATEMENT OF THE CASE

After the Fitzpatricks returned from their annual Florida trip in April 1997, they discovered that the City had condemned their home as "uninhabitable" without notice and without a list of the conditions allegedly making the home "uninhabitable." In May 1997, after discussions with the City failed to resolve the problem, they filed suit in state court for a temporary restraining order to get back into their home. In June, they moved for an emergency writ of mandate, and the Michigan Court of Appeals stayed the case. At that point, the Defendants removed the case to the Eastern District of Michigan, where the case started over.

The District Court denied a motion for preliminary injunction, and the Fitzpatricks' motion for partial summary judgment. By December 1997, Defendants filed a motion to dismiss for failure to state a claim upon which relief could be granted. Before Defendants answered the discovery served, the District Court dismissed the case on February 27, 1998.

On May 21, 1999, the Sixth Circuit reversed and remanded with an instruction that the District Court could not dismiss the case without a factual finding as to whether there was an emergency excusing pre-deprivation process.

Upon remand, the Fitzpatricks pressed their discovery designed to show the pattern and practice of illegal condemnations. On March 17, 2000 the Fitzpatricks gained an order compelling the City to produce records of other condemnation; the Defendants filed their motion for summary judgment eleven days later without producing the documents. At the June 27, 1999 hearing, the District Court stated that it would deny the motion due to a genuine issue of material fact, but declined to review the discovery taken between the time of the briefs and the time of the hearing. Instead, it invited further motions if the depositions shed further light on the matter. The Fitzpatricks filed their motion for summary judgment in July 2000, based on the documents and depositions. On August 10, 2000 the District Court issued the order denying the Defendants' motion; the Fitzpatricks' motion was argued on September 15, 2000, but was not resolved before the Officials filed an interlocutory appeal of the District Court's August 10, 2000 order.

Defendants sought a stay of proceedings during the interlocutory appeal. The Fitzpatricks opposed any stay. Although the District Court denied a stay, the 6th Circuit stayed the case in January 2001. In that same month, the Fitzpatricks moved to dismiss the appeal for lack of jurisdiction. Although the 6th Circuit denied that motion, it ultimately dismissed the appeal for lack of jurisdiction in September 2001. The Fitzpatricks' motion for costs and attorney fees for a frivolous appeal was denied.

Upon remand, the Defendants did not re-file their motion for summary judgment, but still asked the District Court to grant them qualified immunity. Without a briefing schedule or argument, the District Court did so, via its order of February 8, 2002. In that order, the District Court found "facts" that were disputed, such as the allegations of the physical state of the home, the allegation of contents "strewn on the lawn," and the allegation of high crime in the neighborhood. The Fitzpatricks filed a motion for reconsideration protesting this procedure, noting that the Court had not ruled on their still-pending motion for summary judgment, and pointing out that the Court's February 8 order failed to consider the claim that the post-deprivation process was inadequate. The District Court conceded that the claim for violation of post-deprivation due process should be addressed, and permitted the case to continue.

After completing discovery, the parties filed cross-motions for summary judgment in October, 2002. On January 24, 2003 the District Court ruled that there were genuine issues of material fact as to whether the Fitzpatricks were improperly denied pre-deprivation process, but that there was no genuine issue of material fact that they were denied post-deprivation process. It also denied

the Officials qualified immunity for the post-deprivation due process violations.

In February 2003, the Officials filed a second interlocutory appeal in the Sixth Circuit. The Fitzpatricks moved for certification that the appeal was frivolous, so as to permit trial pending the appeal. The District Court denied the motion, but stated that in view of the age of the case (nearly 6 years), the Fitzpatricks could choose to try the case against the City immediately and risk having to try it a second time against the individual defendants or to wait for the completion of the interlocutory appeal by the individual defendants. The Fitzpatricks chose an immediate trial against the City. Shortly before the trial date in September 2003, the Defendants filed a motion for stay, which was granted. The District Court, meanwhile, had allowed the Fitzpatricks to resume living in their home, but denied a motion for interim costs and attorney fees because a "reasonable" fee could not be determined without a trial on damages.

On July 15, 2004 the Sixth Circuit denied the second interlocutory appeal. It denied the petition for rehearing en banc on September 17, 2004. Upon remand, the District Court scheduled a status conference for November 30, 2004; at this conference, the Officials announced that they were filing a petition for writ of certiorari.

ARGUMENT

A. The Petition Does Not Raise Issues of Peculiar Gravity or General Importance

The Court normally does not issue a writ of certiorari to review an interlocutory order unless it is necessary to

prevent extraordinary inconvenience and embarrassment in the conduct of the case. *American Construction Co. v. Jacksonville, T. & K.W. Railway Co.*, 148 U.S. 372, 384 (1893). Such review is limited to cases "of peculiar gravity and general importance, or in order to secure uniformity of decision." *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 215, 258 (1916). While an appeal of an interlocutory decision concerning qualified immunity was accepted in *Brosseau v. Haugen*, 2004 WL 2847251 (Dec. 13, 2004 decision), the petition was granted only to correct a "clear misapprehension of the qualified immunity standard." No such misapprehension existed here. Nor is this a case in which Defendants raise issues of general importance; rather, it is simply a last-ditch effort to further delay the trial for which the Fizpatricks have waited nearly eight years.

B. There is no Split of Authority to Reconcile

The Defendants have misconstrued *Parratt v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981) and its progeny to assert that any post-deprivation process is constitutionally permissible, as long as the decision is reviewable. No Circuit has adopted this unique view, which would radically undermine *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

Mathews, supra, is always the touchstone for determining what process is due under any circumstance. The factors to be weighed are 1) the private interest that will be affected by the official action, 2) the risk of erroneous deprivation through the procedures used and the probable value of additional or substitute safeguards, and 3) the Government's interest. *Mathews, supra at* 335. The

Parratt Court applied this test in a very particular setting: a case in which the deprivation could not be predicted. More safeguards could not have addressed the risks when the deprivation could not be anticipated. *Zinermon v. Burch,* 494 U.S. 113, 129-130, 110 S.Ct. 975, 108 L.Ed.2d 100 (1990). This explanation confirms that *Parratt, supra,* cannot reasonably be understood as rejecting the *Mathews* factors. Therefore, when pre-deprivation process is not feasible or constitutionally required, post-deprivation process must still comport with due process by procedures that properly balance the *Mathews* factors.

That is why the Courts have been unanimous in stating that post-deprivation *process*, not just post-deprivation decisions, must be "adequate." For example, the Court in *Cohen v. City of Philadelphia,* 736 F.2d 81, 84-86 (3d Cir. 1984) differentiated between inadequate post-deprivation procedures, which would constitute a due process violation, and an erroneous decision made under proper procedures, which would not constitute a due process violation. *Herwins v. City of Revere,* 163 F.3d 15 (1st Cir. 1998) was based on the assumption that the post-deprivation process offered was not procedurally inadequate. Indeed, the Court noted that if it were unfeasible to notice an appeal within the 7-day limit for post-deprivation appeal and the state refused to permit a belated appeal, "this might raise a question whether state remedies were adequate." *Id. at* 20. No Circuit ignores the fairness of post-deprivation procedures, especially when a citizen challenges the procedures themselves.

In determining what constitutes an "adequate" post-deprivation hearing after emergency deprivation of a home, the Sixth Circuit, after considering the *Mathews* factors, stated:

> Here, post-deprivation state tort remedies are neither timely nor sufficiently remedial for emergency evacuees. Fundamental fairness expects more of a state than mere tort remedies where government dispossesses citizens from their homes.
>
> Because in many cases emergency evacuees may determine there is no need for administrative review, we cannot say that an automatic hearing is constitutionally required. However, fundamental fairness requires notice in short order of the right to an administrative hearing, including the manner designated for obtaining timely review. **The requirement of an immediate and meaningful post-deprivation** process becomes even more important in view of the license which qualified immunity essentially allows public officials when they make judgments affecting the health and safety of our citizens under perceived exigent circumstances. Even though we recognize that these judgments may be mistaken, the opportunity of an administrative hearing assures that fairness will quickly prevail and that constitutional rights, if mistakenly curtailed, will be immediately restored. Without the assurance of immediate review, qualified immunity may be wrongly perceived as an open invitation for public officials to ignore fundamental rights without any fear of censure. This is most certainly not our intended message.

Flatford v. City of Monroe, 17 F.3d 162, 169 (6th Cir. 1994) (emphasis added). This rule has served the people of the 6th Circuit well, as evidenced by such cases as *Jones v. City of Youngstown,* 980 F. Supp. 908 (N.D. Ohio 1997); *Mitchell v. City of Cleveland,* 172 F.3d 49 (Table), 1998 WL 898872 (6th Cir. Dec. 17, 1998); *Thomas v. Cohen,* 304 F.3d

563 (6th Cir. 2002); and *Sell v. City of Columbus*, 2002 WL 2027113 (6th Cir. August 26, 2002).

The Officials have not tried to deny that, regardless of any other factors, the actual (as opposed to written) post-deprivation process routinely followed in Dearborn Heights could not have afforded any meaningful hearing at all. *They did not deny that the post-deprivation process sent citizens to the Demolition Board of Appeals ("DBA"), which does not review the reasons for condemnation, nor whether the reasons were correct.* As the District Court said, following the procedure would not have resulted in review of the condemnation decision at all. Thus, regardless of any other factors, the post-deprivation process was inadequate. One of the cases upon which the Officials rely, *Grayden v. Rhodes,* 345 F.3d 1225 (11th Cir. 2003), offered majority and dissenting opinions based on different beliefs about whether the post-deprivation process could, as a matter of law, reverse the decision under review. The majority believed that it could, and declared the post-deprivation process adequate; the dissent believed that it could not, and called the post-deprivation process inadequate. Like the District Court in this case, it was prepared to examine whether a post-deprivation process was "adequate" by examining whether it could actually provide a meaningful review.

The Officials did not deny that the DBA had, as a voting member, the man who made the condemnation decision (which, in accordance with due process, should have been the subject matter of the review). Under one of the very cases upon which the Officials now rely, *Myrick v. City of Dallas,* 810 F.2d 1382 (5th Cir. 1987), the Fifth Circuit examined a post-deprivation process to determine whether its institutional structure made it "inadequate."

Id. at 1387. To do so, the Fifth Circuit applied *Withrow v Larkin,* 421 U.S. 35, 47, 95 S.Ct. 1456, 1464, 43 L.Ed.2d 712 (1975) – the very case the District Court here cited to show that the DBA's structure made it unfair. Indeed, the Officials failed to dispute the fact that during the time the decisionmaker sat on the Board that should have been reviewing his decisions, not one condemnation decision had been reversed.

The Officials did not deny that the Fitzpatricks, like all other Dearborn Heights residents deprived of their homes on an "emergency" basis, did not get a written list of the reasons for the condemnation prior to having to set forth in writing an appeal. They did not deny that no one could get a hearing unless and until they let the City inspect the interior of their homes, thus forcing them to give up their 4th Amendment rights under *Camara v. Municipal Court,* 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967).

The cases the Officials cite are part of the uniform federal caselaw that when post-deprivation process is all that is due, that process must be "adequate." "Adequate" post-deprivation process requires that a hearing be "meaningful" under the *Mathews* factors. The Officials have consistently failed to deny that the actual post-deprivation process the City followed would not have reviewed the decision at issue, would have required an appeal without knowing the reasons for the decision being appealed, and would have required forfeiture of 4th Amendment rights as set forth in *Camara, supra*. They did not deny that this implicated the doctrine of unconstitutional conditions. *See Dolan v. Tigard,* 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994). Under any test, this is not "meaningful"

process. No split of authority exists to render the Officials' novel theory worthy of Supreme Court consideration.

C. There is no Reason to Review the $200 Fee Determination

Regardless of whether the $200 fee had existed, the other defects in the post-deprivation process (which the Officials admitted by failing to contest) render the process constitutionally inadequate. Reaching out to decide a non-dispositive issue on an interlocutory appeal would be a complete waste of resources.

Should the Court consider the petition of this point at all, it should remember that the $200 fee is in the context of disabled retirees (and others) being forced from their homes without notice. Even if people can borrow or raise the $200, the hearing on whether dispossession of a home was warranted must wait until the sum is raised. The District Court correctly found such a delay impermissible, considering the risk of erroneous deprivation and the "historic and continuing importance" of home ownership. *See U.S. v. James Daniel Good Real Property,* 510 U.S. 43, 54, 114 S.Ct. 492, 126 L.Ed.2d 490, 503 (1993).

Every Court that has reviewed the City's refusal to afford any hearing after depriving citizens of their homes unless the citizens pay $200 has deemed the practice fundamentally unfair. Were this not the case, any municipality short on funding could make money by depriving citizens of property without a good reason, and charging them to have the bogus deprivations reversed. The Courts' concern is not unlike that of this Court in *M.L.B. v. S.L.J.*, 519 U.S. 102, 117 S.Ct. 555, 136 L.Ed.2d 473, 567-568 (1996), in which the Court stated that the fairness of a fee

depends, in part, on whether the fee is imposed on a claimant trying to pursue something or whether it is imposed on a defendant trying to respond to a government action taken against him. Here, the City takes away citizens' homes without notice, and requires them to pay $200 to get any hearing at all. The unfairness of the fee was so obvious that the mayor herself testified that the Building Department personnel had asked her to discontinue the practice of charging $200 in advance for an appeal of an "emergency" condemnation because it was unfair. If even the Officials themselves have admitted that the charge was fundamentally unfair, and the practice has been stopped, it is a waste of resources to review the practice at the highest level.

D. There is no Reason to Review the Determination that Dearborn Heights Did not Follow Its Own Ordinances

Dearborn Heights' written ordinances provided for speedy hearings, which would actually review the actions appealed. In violation of those post-deprivation processes, the Officials admitted routinely ignoring the ordinances and instead installing the post-deprivation regime that averaged a 109-day wait to a hearing and refused to examine the decision challenged. The Sixth Circuit agreed that this process was neither "immediate" nor "meaningful" as required in *Flatford, supra. Jackson v. Cain*, 864 F.2d 1235, 1251 (5th Cir. 1989) cannot be deemed a contradictory opinion, as it merely held that failure to follow a Department of Corrections procedure did not necessarily constitute a violation of procedural due process, as long as the actual procedures *did* afford due process.

Moreover, the Sixth Circuit addressed the issue of failure to follow the ordinances in the section of its opinion dealing with whether a reasonable officer would be aware that his conduct was unlawful. In that context, the Sixth Circuit noted that the right to meaningful post-deprivation process was well-established. It also stated that it was objectively unreasonable for the officials to fail to follow the ordinances, just as it was objectively unreasonable to demand $200 for a hearing the citizens were entitled by statute to receive. The Officials have presented no split of authority or overwhelming necessity for the Court to reverse the obvious: deliberate replacement of a fair procedure required by ordinance with an unwritten unfair procedure is objectively unreasonable.

E. There is no Reason to Review the Determination that the Post-Deprivation Process did not Afford "Immediate" Review

Again, the Officials misinterpret the facts and the 6th Circuit. While Mr. Simakas predicted that if the Fitzpatricks cooperated, their hearing would take place in two or three weeks, the undisputed facts disclosed that cooperating dispossessed citizens who requested such a hearing waited an average of 109 days for their "immediate" hearings on their homes.

Even if the Officials had been correct about the hearing taking place in two or three weeks, this is not an "immediate" hearing. The requirement for an "immediate" hearing does not arise from the ordinances the Officials routinely ignored. Rather, it arises from the Sixth Circuit's balancing of the *Mathews* factors in *Flatford, supra.* The Officials failed to convince the 6th Circuit to abandon the

Flatford standard, and cite no Circuit that has a substantially different time limitation for hearings after emergency home deprivations. Cases involving job actions are inapposite. The Court has recognized that a citizen's fundamental right to his own home is a right of "historic and continuing significance." No citizen's fundamental liberty to live in his own home should be taken without warning and with a blithe admonition to find other shelter for "two or three weeks" until the City can get around to explaining why the action was taken and holding a hearing to examine the propriety of the action. Dearborn Heights' Ordinances 7-485 and 7-482 recognize this truth, and *Flatford, supra,* strikes the proper balance in enforcing citizens' rights while allowing cities the room to take necessary emergency action.

F. The Court Should Award the Fitzpatricks Damages, Including Double Costs and Attorney Fees, for Defendants Delaying Trial Through a Frivolous Petition

Supreme Court Rule 42.2 provides that the Court may award damages, and single or double costs, for a frivolous petition. This is not a new rule. As early as 1922, the Court held that when an argued position is wholly without merit, and prosecuted solely for delay, the Court may impose damages. *See Wagner Elec. Mfg. Co. v. Lyndon,* 262 U.S. 226, 233, 43 S.Ct. 589, 67 L.Ed. 961, 964-965 (1922).

The Officials know, as they knew in the 6th Circuit appeal, that failure to contest all the ways in which the post-deprivation process was inadequate (and therefore unconstitutional) would doom their appeal to failure because it would not reverse the finding of liability. Moreover, they know now, as they knew in the 6th Circuit

appeal, that a post-deprivation hearing that will not review the condemnation is not "meaningful" under any constitutional standard. Nor have the Officials found any caselaw supporting their argument that any post-deprivation process is "adequate" post-deprivation process. Finally, they have not advanced any reason to depart from the unanimous caselaw requiring post-deprivation process to be fair under the *Mathews* factors. Their petition is therefore frivolous.

This petition is simply the latest in a history of delay against the claims of this disabled retired couple. The fears of the Sixth Circuit in *Yates v. City of Cleveland,* 941 F.2d 444, 448-449 (6th Cir. 1991) have come true in this case, which has become a textbook example of how a municipality, through the improper use of interlocutory appeals, delay of discovery, and frivolous appeals, can delay a section 1983 case for years. The Officials, after the dismissal phase, filed one of their multiple motions for qualified immunity within days of being ordered to produce documents. They appealed the denial of qualified immunity knowing that there was no jurisdiction for it, and sought a stay to do so. After the second appeal, they waited until a scheduled trial date was nearly upon them before seeking another stay pending the third interlocutory appeal. Nor is it an accident that the Fitzpatricks received notice of the planned petition for writ of certiorari only at the scheduling conference at which they expected to get a new trial date. Each motion has been filed at the precise time most likely to extend and delay the proceedings.

The Fitzpatricks have suffered as a result. After having been barred from their home in 1997, they were reduced to living in trailers until the District Court declared the process unconstitutional in 2003, after two

interlocutory appeals. Two years later, they are still awaiting their trial. They suspect the Defendants of trying to delay trial until after the Fitzpatricks die or run completely out of resources or health. In addition, Mrs. Fitzpatrick's elderly father has now died, and she wishes to preserve intact the acreage he owned. Without resolution of this case, she cannot know how much money she has available to preserve the land. The federal courts owe citizens better than an eight-year odyssey in order to vindicate their fundamental rights. This is especially true when government officials unnecessarily delay trials through numerous frivolous appeals.

The Fitzpatricks urge this Honorable Court to send an unequivocal message that frivolous litigation has a price, regardless of whether the entity perpetuating it is a prisoner, a consumer, a corporation, or a government official. They respectfully request damages of double costs and attorney fees.

CONCLUSION

For these reasons, the Fitzpatricks respectfully request the Court to deny the Petition, to declare it frivolous, and to award double costs and attorney fees under Rule 42.2.

Respectfully submitted,

ELIZABETH A. DOWNEY
38505 Woodward Ave.
Ste. 2300
Bloomfield Hills, MI 48304
(248) 258-7010
Counsel for Respondents